



Discretionary Authority Of Law Enforcement Officials In The Settlement Of Criminal Cases Based On Restorative Justice

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ABSTRACT

Discretion exercised by law enforcement officials constitutes an inherent authority within the law enforcement function to make decisions or take actions based on professional judgment, particularly in circumstances that are not comprehensively regulated by statutory provisions. In the development of modern criminal law, discretionary power has gained increasing relevance, especially when associated with the application of a restorative justice approach that emphasizes victim recovery, offender accountability, and the restoration of social harmony within the community. This article aims to examine the scope of discretionary authority held by law enforcement agencies in resolving criminal cases through a restorative justice framework in Indonesia. The discussion focuses on the factors that encourage the use of discretion, the normative and ethical limitations governing its application, the roles of various law enforcement institutions within the criminal justice system, as well as the challenges encountered in practical implementation. The research employs a normative juridical approach, utilizing library-based data collection methods through the analysis of statutory regulations, legal doctrines, and relevant national legal journal publications. The data are analyzed using a descriptive-analytical method to assess the alignment between legal norms and law enforcement practices. The findings indicate that law enforcement discretion can serve as an effective instrument in supporting the implementation of restorative justice, particularly in certain criminal cases with limited social impact. Nevertheless, the effectiveness of discretionary practices is highly dependent on the consistent application of prudential principles, proportionality, legal certainty, utility, and participatory transparency involving victims, offenders, and the community. In the absence of clear guidelines and adequate oversight mechanisms, the exercise of discretion may lead to legal uncertainty and unequal justice. Therefore, strengthening regulatory frameworks and enhancing the capacity of law enforcement personnel are essential prerequisites for optimizing discretion within a restorative justice-based criminal justice system.

INTRODUCTION

Criminal law enforcement in Indonesia is fundamentally aimed at maintaining social order, achieving justice, and ensuring the protection of human rights. However, in practice, the conventional criminal justice system largely oriented toward punitive measures has been subject to persistent criticism. It is often regarded as excessively formalistic, repressive, and insufficiently responsive to the needs of victims and the restoration of social relationships. Lengthy judicial procedures, high litigation costs, and the stigmatizing effects imposed on offenders remain recurring structural problems within Indonesia's criminal justice system (Mustolih & Rahman, 2026). These conditions have generated a growing demand for alternative approaches that are more humane and aligned with the principles of substantive justice.

Within this context, restorative justice has emerged as an alternative paradigm in the resolution of criminal cases. Rather than prioritizing retribution against offenders, restorative justice emphasizes the

recovery of victims, the assumption of responsibility by offenders, and the restoration of disrupted social relationships. This approach conceptualizes crime not merely as a violation against the state, but as a social conflict that directly affects individuals and communities (Silvia, 2024). Consequently, restorative justice requires the active involvement of multiple stakeholders, including victims, offenders, families, and the broader community.

The development of restorative justice in Indonesia is closely linked to the role of law enforcement institutions, particularly the police, prosecutors, and the judiciary. These institutions occupy a strategic position as key decision-makers from the earliest stages of the criminal process. At this juncture, discretionary authority becomes particularly significant. Discretion enables law enforcement officials to make decisions based on professional judgment, moral considerations, and social context, especially in situations where legal rules are incomplete or provide alternative courses of action (Wirayudha, 2025).

Discretion is inherently a logical consequence of the general and abstract nature of legal norms. Positive law cannot possibly regulate every concrete event that arises in society. As a result, law enforcement officers are entrusted with the authority to interpret and apply the law in accordance with the specific circumstances of each case. Within the criminal justice system, discretion is frequently exercised to determine whether a case should proceed through formal judicial channels or be resolved through alternative mechanisms, including restorative justice.

Nevertheless, the exercise of discretion by law enforcement officials remains a subject of ongoing debate. On the one hand, discretion is perceived as a means to achieve substantive justice and enhance the efficiency of law enforcement. On the other hand, it carries the risk of abuse of power if not constrained by clear legal principles and effective oversight mechanisms. Concerns regarding legal uncertainty, discriminatory practices, and procedural injustice have become central issues in the discourse surrounding discretionary authority (Utomo, 2023).

In Indonesian law enforcement practice, discretionary power often serves as a key instrument in the implementation of restorative justice, particularly in minor offenses, cases involving limited harm, or complaint-based crimes. For example, the Indonesian National Police, through Police Regulation Number 8 of 2021, have been provided with guidelines for resolving certain criminal cases using a restorative justice approach. Similarly, the public prosecution service has adopted restorative justice policies that authorize prosecutors to terminate prosecutions based on considerations of public interest and social justice.

Despite these regulatory developments, the practical application of discretion-based restorative justice continues to face significant challenges. Variations in law enforcement officers' understanding of restorative justice, limited technical guidelines, and a deeply entrenched punitive legal culture pose substantial obstacles. In many instances, discretion is mistakenly perceived as an absolute freedom rather than as a form of authority that must be exercised responsibly and accountably (Adnyani, 2021). Such misconceptions risk generating public resistance and undermining trust in law enforcement institutions.

Furthermore, restorative justice practices are often confronted with demands for legal certainty and public perceptions of justice. In some cases, the public views restorative justice as a form of leniency or even as granting impunity to offenders. These perceptions indicate that the application of discretion requires not only a strong legal foundation but also sufficient social understanding and acceptance (Ramadhani, 2024). Accordingly, discretion must be exercised by carefully balancing legal certainty, justice, and societal benefit.

From a legal theoretical perspective, law enforcement discretion can be understood as a mechanism to bridge the gap between normative legal frameworks and social realities. Rigid and formalistic legal rules frequently fail to address the complex social conditions underlying criminal behavior. Through the use of discretion, law enforcement officials are expected to provide more contextual and restorative solutions, without disregarding the fundamental principles of criminal law (Yahya & Saravista, 2024).

The reform of Indonesia's national criminal law, particularly with the enactment of Law Number 1 of 2023 on the Criminal Code, further reinforces the position of restorative justice within the legal system. This legislative reform signifies a paradigm shift from a predominantly retributive approach toward one that is more restorative and rehabilitative in nature. Within this framework, discretionary authority functions as a crucial instrument for translating the spirit of legal reform into concrete law enforcement practices.

Nonetheless, it is essential to emphasize that discretion cannot be detached from the principles of the rule of law (rechtstaat). Every exercise of discretionary power must remain within legal boundaries and be grounded in the principles of legality, accountability, and human rights protection. Uncontrolled discretion has the potential to erode the supremacy of law and undermine public perceptions of justice (Muliadi et al., 2024). Therefore, strengthening normative frameworks and professional ethical standards for law enforcement officers is an indispensable prerequisite for the effective implementation of restorative justice-based discretion.

Based on the foregoing discussion, it is evident that the discretionary authority of law enforcement officials occupies a highly strategic position in the resolution of criminal cases through restorative justice. Discretion is not merely an administrative tool, but a legal instrument that significantly influences the direction and quality of criminal law enforcement in Indonesia. Accordingly, an in-depth examination of discretionary authority, its limitations, and its implications for restorative justice is both necessary and timely.

This article seeks to provide a comprehensive analysis of law enforcement discretion in the resolution of criminal cases based on restorative justice. The discussion focuses on the conceptual and normative foundations of discretion, its role in supporting restorative justice, as well as the challenges and legal implications arising from its implementation in Indonesian law enforcement practice. Ultimately, this study is expected to contribute both academically and practically to the development of a criminal justice system that is more just, humane, and oriented toward social restoration.

RESEARCH METHOD

This study adopts a normative juridical approach, a legal research method that focuses on the examination of applicable positive law, legal principles, legal doctrines, as well as judicial decisions and institutional policies related to the discretionary authority of law enforcement officials in resolving criminal cases through a restorative justice framework. This approach is selected because the research does not aim to investigate the empirical behavior of law enforcement officers directly, but rather to analyze the normative and conceptual construction of discretion within the Indonesian criminal justice system (Saebani, 2021).

The type of research conducted is doctrinal legal research, which seeks to interpret, analyze, and evaluate legal norms governing discretionary power and the implementation of restorative justice. Through this approach, the study examines the consistency between existing legal regulations and the evolving practices of law enforcement, particularly in the context of resolving criminal cases through restorative mechanisms.

The data utilized in this research consist exclusively of secondary legal materials, categorized into three main types of legal sources. First, primary legal materials include relevant statutory regulations, such as Law Number 1 of 2023 concerning the Criminal Code, the Criminal Procedure Code, and internal regulations issued by law enforcement institutions governing the application of restorative justice, including police regulations and prosecutorial policies. Second, secondary legal materials comprise accredited national legal journals, legal textbooks, research reports, and scholarly articles addressing discretion, restorative justice, and the criminal justice system. Third, tertiary legal materials consist of legal dictionaries and legal encyclopedias used to strengthen conceptual understanding.

Data collection is conducted through library research by systematically reviewing, identifying, and analyzing legal materials relevant to the research topic. All collected legal sources are carefully selected based on their relevance and academic credibility, with particular emphasis on materials derived from peer-reviewed and accredited national legal journals.

The data are analyzed using a qualitative method with a descriptive-analytical approach. This analysis involves outlining legal provisions that regulate the discretionary authority of law enforcement officials and subsequently relating them to the concepts and principles of restorative justice. Legal interpretation is then carried out systematically and conceptually to assess the extent to which discretionary authority may be exercised lawfully, proportionally, and accountably in the resolution of criminal cases.

The results of the analysis are presented in a coherent and argumentative narrative form to provide a comprehensive overview of the role of law enforcement discretion in supporting the implementation of restorative justice. Through this methodological framework, the study is expected to produce prescriptive conclusions, offering conceptual recommendations for strengthening the application of restorative justice-based discretion within Indonesia's criminal justice system.

DISCUSSION

The Concept of Discretion in Criminal Law Enforcement

Discretion refers to the authority vested in law enforcement officials to select and determine specific courses of action in the process of criminal law enforcement based on professional judgment, situational assessment, and contextual considerations. This authority arises as a logical consequence of the general and abstract nature of positive law, which is inherently incapable of regulating every concrete event that occurs in society. As a result, discretion functions as a legal mechanism to bridge the gap between written legal norms and the dynamic realities of social life (Yasa & Sugama, 2024).

From the perspective of criminal law, discretion should not be understood as an unrestricted freedom granted to law enforcement officials. Rather, it constitutes a limited authority that must be exercised within the boundaries of statutory law, professional ethics, and the fundamental principles of a rule-of-law state. Discretion is intended to enable law enforcement officers to act effectively and fairly in situations that are not explicitly regulated by legislation or in circumstances where rigid application of legal provisions may result in substantive injustice. In this sense, discretion serves a corrective function against the inflexibility of formal legal rules.

At the investigative stage, police discretion represents one of the most frequently encountered forms of discretionary authority in practice. Investigators possess the competence to determine the direction of case handling, including decisions on whether a report should be escalated to a formal investigation, discontinued, or resolved through alternative mechanisms such as penal mediation. This form of discretion is commonly

applied in minor criminal offenses, cases involving limited material harm, or complaint-based crimes, where the interests of both victims and offenders may be effectively restored through mutual agreement.

Discretion also plays a significant role in setting law enforcement priorities. Given the limited resources available to law enforcement institutions, not all criminal cases can be processed comprehensively through formal judicial procedures. Accordingly, discretion is employed to assess the urgency and social impact of a particular case, allowing enforcement efforts to be focused on matters that genuinely require coercive state intervention. In this context, discretion functions both as an instrument of efficiency and as a means of humanizing criminal law enforcement.

The concept of discretion in criminal law enforcement is closely associated with the principles of opportunity and utility. Law enforcement officials, particularly public prosecutors, are granted the authority to evaluate whether pursuing prosecution in a given case will generate greater benefits for legal interests and society at large. When prosecution is likely to exacerbate social conflict or fails to produce meaningful justice, discretion may be exercised to terminate legal proceedings and redirect case resolution toward more restorative approaches.

Nevertheless, the exercise of discretion in criminal law enforcement is not without risk. Discretionary decisions made in the absence of clear guidelines may lead to legal uncertainty, unequal treatment, and opportunities for abuse of authority. Therefore, discretion must be implemented in accordance with the principles of legality, accountability, proportionality, and transparency. Law enforcement officials are required to justify every discretionary decision they make, both legally and morally, to the public (Tambir, 2019).

Within the framework of a rule-of-law state, discretion must not contradict the fundamental objectives of criminal law, namely the protection of legal interests, the realization of justice, and the maintenance of public order. On the contrary, discretion should be utilized as a tool to achieve substantive justice when the textual application of legal norms fails to deliver fair outcomes. Accordingly, discretion does not weaken the authority of law but constitutes an integral component of a responsive and adaptive criminal law enforcement system that is attuned to societal needs.

The Role of Discretion in the Implementation of Restorative Justice

Within the framework of restorative justice, the discretionary authority of law enforcement officials plays a pivotal role as the primary gateway for resolving criminal cases outside formal judicial mechanisms. Discretion empowers law enforcement institutions, particularly the police and the prosecution service, to conduct a comprehensive assessment of the characteristics of a case, the interests of the victim, the degree of the offender's culpability, and the broader social impact arising from the criminal act. Through such evaluative judgment, officials are able to determine whether a case is more appropriately addressed through restorative measures rather than through conventional punitive procedures (Liyus & Wahyudi, 2020).

The significance of discretion in the application of restorative justice is most evident at the early stages of criminal case handling. At the police level, discretionary authority enables investigators to initiate and facilitate penal mediation processes between offenders and victims, involving family members and community representatives when necessary. This process is designed to achieve a fair and balanced agreement that accommodates not only the interests of the parties directly involved, but also the concerns of the affected social environment. Where such an agreement is reached and satisfies restorative justice criteria, law enforcement officials may decide not to advance the case to the prosecution stage.

At the prosecutorial level, discretion functions through the application of the opportunity principle, which grants prosecutors the authority to evaluate whether pursuing a prosecution serves the broader interests of law and society. Prosecutors may exercise discretion to discontinue prosecution when restorative resolutions have adequately addressed the victim's losses, fulfilled the sense of justice, and prevented the escalation of social conflict. This policy approach demonstrates that restorative justice does not signify a neglect of legal norms, but rather represents a law enforcement strategy oriented toward social recovery and public benefit (Ramadhan, 2021).

Beyond offering alternative avenues for case resolution, discretion also operates as a control mechanism against the excessive use of punishment. Formal judicial proceedings often generate adverse consequences, including social stigmatization of offenders, psychological burdens on victims, and the accumulation of cases within the court system. By exercising discretion appropriately, law enforcement authorities can alleviate the pressure on the criminal justice system while promoting resolutions that are faster, more efficient, and more humane.

The role of discretion in restorative justice is also closely linked to efforts to rebuild public trust in law enforcement institutions. When the public perceives that criminal cases are resolved in a fair, transparent, and recovery-oriented manner, the legitimacy of law enforcement is strengthened. Discretion that facilitates dialogue and reconciliation underscores the function of law not merely as a coercive instrument, but as a means of peaceful social conflict resolution.

Nevertheless, the effectiveness of discretionary authority in implementing restorative justice is highly dependent on the integrity and professionalism of law enforcement officials. Discretion exercised in the

absence of clear guidelines and effective oversight may result in inconsistent practices and create opportunities for abuse of power. Accordingly, discretionary decision-making must be guided by principles of prudence, accountability, and inclusive participation of all relevant stakeholders, in order to ensure that the objectives of restorative justice are achieved in an optimal and equitable manner.

Legal Limitations and Governing Principles in the Exercise of Discretion

Although discretionary authority plays a strategic role in promoting a more adaptive and justice-oriented approach to law enforcement, it cannot be exercised without clear limits. Within a rule-of-law framework, all actions undertaken by law enforcement officials must remain grounded in applicable legal norms and fundamental principles of law enforcement. Accordingly, the use of discretion must take into account the principles of legal certainty, expediency, and proportionality, so that it does not deviate from the underlying objectives of criminal law (Afifah, 2024).

The principle of legal certainty requires that every discretionary decision be supported by a clear legal basis and be capable of legal justification. Discretion must not serve as a pretext for disregarding positive law; rather, it functions as a mechanism to address legal gaps or to provide solutions when existing norms are ambiguous or open to multiple interpretations. In the absence of legal certainty, discretionary practices risk producing inconsistent law enforcement outcomes and eroding public confidence in law enforcement institutions (Heriyanto, 2022).

In addition to legal certainty, the principle of expediency constitutes a key consideration in the exercise of discretion. Law enforcement officials are expected to assess the extent to which discretionary actions generate greater benefits for legal interests and for society as a whole. Within the context of restorative justice, such benefits are not measured solely in terms of procedural efficiency, but also in the capacity of restorative resolutions to repair harm suffered by victims, reduce social conflict, and prevent recidivism. Discretion that neglects considerations of expediency may result in decisions that are formally lawful yet socially unjust (Febrianto & Sugama, 2025).

The principle of proportionality likewise serves as a critical limitation on discretionary authority. Law enforcement officials must ensure that the measures taken are commensurate with the severity of the offense, the degree of the offender's culpability, and the interests of both victims and the broader community. Discretion exercised in a disproportionate manner whether excessively punitive or overly permissive can lead to imbalances in justice and foster negative public perceptions of law enforcement practices. Proportionality thus operates as a control mechanism to prevent the arbitrary or discriminatory use of discretion.

In practice, efforts to regulate and constrain discretionary authority have been institutionalized through various internal regulations within law enforcement agencies. One such example is Police Regulation Number 8 of 2021 on the Handling of Criminal Cases Based on Restorative Justice, which provides guidance for investigators in applying restorative justice principles. This regulation establishes specific criteria, including the nature of the offense, the extent of harm caused, and the existence of an agreement between the victim and the offender. Nonetheless, several studies indicate that these regulatory instruments continue to allow a broad scope for interpretation and have yet to comprehensively address the precise limits of discretionary authority.

Beyond regulatory frameworks, oversight and accountability mechanisms represent essential components in governing the exercise of discretion. Ideally, every discretionary decision should be transparently documented and subject to both internal and external review mechanisms. Such oversight is intended to prevent abuses of power and to ensure that discretion is exercised solely in the interest of justice and public benefit. In the absence of effective accountability structures, discretionary authority may become a source of inequality and injustice within the law enforcement process (Febrianto & Sugama, 2025).

Challenges in Implementing Restorative Justice Based Discretion

The application of discretionary authority by law enforcement officials in resolving criminal cases through a restorative justice approach is confronted by a range of challenges, encompassing normative, institutional, and sociological dimensions. These challenges significantly affect the effectiveness and consistency of restorative justice implementation within Indonesia's law enforcement practices. Although discretion is conceptually regarded as a vital instrument for realizing substantive justice, empirical realities indicate that its practical application continues to face substantial obstacles (Mutiarra Journal, 2024).

One of the primary challenges lies in the varying levels of understanding and interpretation among law enforcement officials regarding the concept of restorative justice. Not all officers possess a comprehensive grasp of its principles, objectives, and procedural mechanisms. Some law enforcement personnel continue to perceive restorative justice as a deviation from conventional, punishment-oriented law enforcement. As a result, discretionary authority is often exercised cautiously, inconsistently, or even avoided altogether due to concerns about procedural violations or potential legal risks faced by the officers themselves (Kamagi et al., 2025).

Another significant challenge relates to the limited scope and clarity of regulatory frameworks and technical guidelines governing the use of restorative justice-based discretion. Although internal regulations such as Police Regulation Number 8 of 2021 have been introduced, these instruments do not yet provide sufficiently detailed guidance regarding objective criteria, substantive limits, or indicators for evaluating the success of restorative resolutions. This regulatory ambiguity allows for broad interpretation and may result in inconsistent practices across regions and among different law enforcement authorities (Rachman & Zahira, 2025).

Furthermore, a deeply entrenched retributive legal culture constitutes a substantial barrier to the broader adoption of restorative approaches. Within a criminal justice system that has long prioritized punishment as its primary objective, shifting toward a restorative paradigm requires a profound transformation in legal mindset. Law enforcement officials, victims, and the public alike often equate justice with the imposition of punishment. Consequently, the use of restorative discretion is sometimes perceived as a weakening of law enforcement or as a lack of decisiveness on the part of the state in addressing criminal behavior.

Equally important is the challenge posed by inadequate oversight and accountability mechanisms in the exercise of discretionary authority. Discretionary decisions that are insufficiently documented or poorly supervised may give rise to abuses of power, discriminatory practices, and procedural injustice. In such circumstances, discretion intended as a means of delivering justice may instead become a source of legal uncertainty and diminished public trust in law enforcement institutions (Febrianto & Sugama, 2025).

In addition to internal institutional factors, external challenges also emerge from societal attitudes and expectations. Not all victims or affected parties are willing to resolve criminal cases through restorative justice mechanisms. In certain instances, victims demand formal judicial proceedings as a means of obtaining recognition for the harm they have suffered. When victims' expectations diverge from restorative approaches, law enforcement officials are placed in a difficult position, compelled to balance the victim's sense of justice with broader considerations of social benefit achieved through discretionary decision-making (Kamagi et al., 2025).

Finally, limitations in human resources and supporting facilities further complicate the implementation of restorative justice-based discretion. Penal mediation processes require specialized skills in communication, psychological understanding, and conflict facilitation, competencies that are not always possessed by law enforcement officers. In the absence of adequate training and institutional support, restorative justice initiatives risk being implemented in a merely procedural manner, thereby failing to achieve their intended restorative outcomes (Ikhsan, 2025).

CONCLUSION

The discretionary authority of law enforcement officials constitutes a crucial instrument within Indonesia's criminal justice system, particularly in supporting the implementation of a restorative justice approach. Discretion enables law enforcement officers to move beyond a rigid reliance on conventional punitive mechanisms and to consider alternative forms of criminal case resolution that are more just, humane, and oriented toward victim recovery and social reconciliation. In this regard, discretion functions as a bridge between general legal norms and the complex, dynamic realities of social life.

The analysis demonstrates that, from a conceptual standpoint, discretion plays a strategic role in criminal law enforcement, especially as a means of addressing the rigidity of positive law and advancing substantive justice. In the context of restorative justice, discretionary authority allows law enforcement officials particularly within the police and prosecutorial institutions to prioritize case resolution through dialogue, mediation, and deliberation between offenders and victims, provided that such processes meet established criteria of fairness and mutual consent. This approach has proven effective in reducing the burden on formal judicial institutions, restoring losses suffered by victims, and preventing the escalation of social conflict.

Nevertheless, the exercise of discretion cannot be separated from binding legal limitations and guiding principles. Discretion must be implemented in accordance with the principles of legal certainty, expediency, proportionality, and accountability. In the absence of clear normative guidelines and effective oversight mechanisms, discretionary practices risk generating legal uncertainty, discriminatory treatment, and abuse of authority. Existing regulations 899 such as Police Regulation Number 8 of 2021 while providing an initial framework, still require further refinement to comprehensively regulate the criteria, scope, and limits of discretionary authority.

Beyond normative considerations, the implementation of restorative justice based discretion is also shaped by institutional and sociological factors, including disparities in law enforcement officers' understanding of restorative justice, a legal culture that remains predominantly punishment-oriented, limited human and institutional resources, and varying public perceptions of restorative justice. Accordingly, optimizing the use of discretion within a restorative justice framework necessitates the strengthening of regulatory frameworks, the enhancement of law enforcement capacity through education and training, and a

broader paradigm shift toward a model of law enforcement that is more responsive to the demands of substantive justice and social restoration.

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